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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,074	02/03/2004	Joel F. Zuhars	137782 (MHM - 15221US01)	1973
23446 7590 01/19/2011 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER				
BITAR, NANCY				
ART UNIT		PAPER NUMBER		
2624				
MAIL DATE		DELIVERY MODE		
01/19/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<i>Advisory Action</i> <i>Before the Filing of an Appeal Brief</i>	Application No. 10/771,074	Applicant(s) ZUHARS ET AL.	
	Examiner NANCY BITAR	Art Unit 2624	

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —THE REPLY FILED 27 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-3 and 5-20.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant argues that neither Jensen et al nor Zylka et al teaches " automatically displaying in an output device each image in said collected plurality of static 2D images in sequential image by image manner to create 3D information of said position and orientation of said instrument by creating motion through animation process." Examiner refers to Jensen et al that teaches the display graphics processor 295 that displays the image slice on the display 250, the display graphics present multiple 2D image slices simultaneously on the display; column 10 lines 35-50. Examiner used a secondary reference Zylka et al that is obvious in view of Jensen et al. Zylka et al teaches position measuring device 13 with two infrared CCD cameras 14 which are arranged on a stand to the side of the examination zone. The spatial positions of correspondingly constructed infrared light-emitting diodes can be determined by means of said cameras. In order to determine the position of a medical instrument 16 used during the intervention, in this case being a biopsy needle, the end of the biopsy needle 16 which projects from the patient is provided with three of such infrared light-emitting diodes 17 in defined positions. In order to determine the position of the X-ray device 2, or the imaging geometry of the X-ray device 2, during the acquisition of X-ray images during the operation, three of such light-emitting diodes 18 and 19, respectively, are provided on the X-ray source 6 and the X-ray detector 7, respectively. The spatial position of an acquired X-ray image can be determined from the imaging geometry thus determined, that is, the position of the X-ray image relative to the patient 3. Note that the displaying device (paragraph [0019]) displays as a sequence of images (i.e. motion animation) along with a position and orientation of said instrument, wherein said at least one position and orientation of said at least one instrument is projected on each said image (Paragraph[0018-0020] Additionally the applicant's argument that the combination of all the features recited in claims makes the applicant's invention patentable different is not found persuasive and thus Jensen et al and Zylka et al still reads on the applicant's claimed invention. All remaining arguments are reliant on the aforementioned and addressed arguments and thus are considered to be wholly addressed herein.
12. ☐ Note the attached information, *Disclosure Statement(s)*, (PTO/SR/DR) Paper No(s).

/Nancy Bitar/

/DANIEL G MARIAM/
Primary Examiner, Art Unit 2624